

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:WR:RMD:DEN:TL-N-5379-00  
JES Steele

date: .

to: Jeff Clairmont, Revenue Agent  
POD: Kalispell, MT

from: Assistant District Counsel, Rocky Mountain District, Denver

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subject: What constitutes a valid return?

Taxpayer: [REDACTED]

Tax Years: [REDACTED] and [REDACTED]

You have requested the opinion of this office as to whether the partially completed returns submitted by the taxpayer for the taxable years [REDACTED] and [REDACTED] on [REDACTED] constitute valid returns as related to the expiration of the statute of limitations for refund purposes. You are particularly concerned with the taxable year [REDACTED].

Based upon the following information, it is our opinion that the partially completed returns submitted by the taxpayer on [REDACTED] constitute valid tentative returns for the taxable years [REDACTED] and [REDACTED] for purposes of determining the statute of limitations question. This memorandum, however, is limited to the specific facts of this case.

FACTS

The taxpayer, [REDACTED], did not timely file his income tax returns for the taxable years [REDACTED] and [REDACTED]. The Service prepared Substitutes for Returns for [REDACTED] and [REDACTED], which were input on [REDACTED]. The taxpayer did, however, timely file his income tax returns for [REDACTED], [REDACTED], and [REDACTED], each of which showed a refund due to the taxpayer. These refunds were applied to prior balances due by the taxpayer.

On [REDACTED], the taxpayer's partially completed tax returns for [REDACTED] and [REDACTED] were received by the [REDACTED]. The [REDACTED] and [REDACTED] returns submitted by the taxpayer contained his name, social security number, address, 2 marked filing statuses, the exemptions for himself and his son, whom he was claiming as a dependent, and each return was signed by the

petitioner. Attached to each return were invoices showing the non-employee compensation amounts received by the taxpayer in [REDACTED] and [REDACTED].

On [REDACTED], the taxpayer submitted completed returns to the Internal Revenue Service. The returns were reviewed and appeared to be correct. The [REDACTED] return submitted by the taxpayer results in a balance due. The taxpayer's [REDACTED] return, however, shows that he is entitled to a refund. The statute of limitations date for filing a timely return in order to receive the refund was [REDACTED], since [REDACTED] was a Saturday. When the taxpayer was asked why he did not complete the returns he submitted on [REDACTED], the taxpayer indicated that he did not know how to complete the returns and he could not find anyone to help him with his returns, so he completed them the best he could and sent them in to the Service Center.

#### LEGAL ANALYSIS

The Internal Revenue Code, which liberally uses the concept of returns, does not formally define "return." Under I.R.C. § 6011(a), titled the "[g]eneral requirement of return, statement, or list," the Code provides:

[w]hen required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title, or with respect to the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

See also Treas. Reg. § 1.6011-1(a), (b). Most individuals are required to file returns. See I.R.C. § 6012. As the Supreme Court has stated, "[t]he purpose [of the return] is not alone to get tax information in some form but also to get it with such uniformity, completeness, and arrangement that the physical task of handling and verifying returns may be readily accomplished." Commissioner v. Lane-Wells Co., 321 U.S. 219, 223 (1944). Although the general view is that substantial compliance is sufficient to comply with the law, see BORIS I. BITTKER & MARTIN J. McMAHON, JR., FEDERAL INCOME TAXATION OF INDIVIDUALS § 40.1 (1988), the Internal Revenue Code does not specifically set out how accurate, thorough, or complete the requisite form must be in order to qualify as a return under the many sections of the Code that reference a return.

In this case, we will apply a four-part test to determine whether a filing with the IRS constitutes a "return." In order for a document to qualify as a return: (1) it must purport to be a return; (2) it must be executed under penalty of perjury; (3) it must contain sufficient data to allow calculation of tax; and (4) it must represent an honest and reasonable attempt to satisfy the requirements of the tax law. This test was derived from two Supreme Court cases: Germantown Trust Co. v. Commissioner, 309 U.S. 304 (1940), and Zellerbach Paper Co. v. Helvering, 293 U.S. 172 (1934).

In Germantown, the Court was asked to decide whether a fiduciary Form 1041 filed by the petitioner, that stated no tax was due, qualified as a return under § 275(a) of the Revenue Act of 1932. Id. at 306. The determination would control the onset of the limitations period for assessing a deficiency. Id. at 307. The Court held "that where a fiduciary, in good faith, makes what it deems the appropriate return, which discloses all of the data from which the tax . . . can be computed," a proper return has been filed. Id. at 309. The Court in Zellerbach, also discussing the date at which the limitations period against the IRS begins to run for deficiency assessments, held that "[p]erfect accuracy or completeness is not necessary to rescue a return from nullity, if it purports to be a return, is sworn to as such, and evinces an honest and genuine endeavor to satisfy the law." 293 U.S. at 180. The Tax Court, in Beard v. Commissioner, 82 T.C. 766 (1984), aff'd, 793 F.2d 139 (6th Cir. 1986), combined the principles of Zellerbach and Germantown to arrive at the four-part test quoted above. See 82 T.C. at 777.

In this case, it appears that the incomplete documents submitted by the taxpayer on [REDACTED] for the taxable years [REDACTED] and [REDACTED] constitute a return for filing purposes. The returns submitted by the taxpayer for [REDACTED] and [REDACTED] were completed on the Form 1040A, he attempted to include the necessary information regarding filing status, exemptions, and income, he signed the Form 1040A under penalty of perjury. Attached to the returns were invoices which could be used to calculate the taxpayer's earned income, and using the standard deduction for the years at issue, the Service could have calculated the tax he owed for [REDACTED] and [REDACTED]. Without additional information, however, it is difficult to determine if the returns submitted on [REDACTED] demonstrate an honest and reasonable attempt by the taxpayer to satisfy the requirement of the law. The taxpayer, however, states he did the best he could since he could not find anyone to help him prepare these returns and he did not know how to complete the returns. Thus, giving the taxpayer the benefit of the doubt as to why he submitted the partially completed returns on [REDACTED] under the four-part

listed above, the returns submitted on [REDACTED] would appear to constitute valid timely returns.

Treas. Reg. § 1.6011-1(b), however, states that:

. . . Each taxpayer should carefully prepare his return and set forth fully and clearly the information required to be included therein. Returns which have not been so prepared will not be accepted as meeting the requirements of the Code. In the absence of a prescribed form, a statement made by the taxpayer disclosing his gross income and the deductions therefrom may be accepted as a tentative return, and if filed within the prescribed time, the statement so made will relieve the taxpayer from liability for the addition to tax imposed for the delinquent filing of the return, provided that without unnecessary delay such a tentative return is supplemented by a return made on a proper form.

Upon reading Treas. Reg. § 1.6011-1(b), it could be argued that the taxpayer, who submitted an incomplete Form 1040A for the taxable year [REDACTED] and [REDACTED], did not timely file his tax returns for [REDACTED] and [REDACTED]. Relying upon the information listed above, it appears that by using the proper form 1040A with incomplete information, the taxpayer's returns for [REDACTED] and [REDACTED] were untimely, but if he had merely submitted a written statement using the same information, the statement would qualify as a timely tentative return so long as the statement was supplemented by a return on a proper form.

As noted in this case, on [REDACTED], the taxpayer, after obtaining help in preparing his returns, submitted completed returns for the taxable years [REDACTED] and [REDACTED] which supplemented the partially completed returns submitted on [REDACTED]. The returns filed on [REDACTED] were reviewed and accepted as correct.

#### CONCLUSION

Without addressing what constitutes unnecessary delay and based upon the facts listed above, it is our opinion that the Service treat the returns filed on [REDACTED] as valid tentative returns since the taxpayer attempted to timely file tax returns for the taxable years [REDACTED] and [REDACTED] and eventually did on [REDACTED]. Thus, the taxpayer would be entitled to a refund for the taxable year [REDACTED].

If you have any questions or require additional assistance,  
please call me at (303) 844-2214 ext. 264.

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